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February 26, 2014

VIA ECF

Honorable Vernon S. Broderick
United States District Judge
United States Courthouse
Southern District of New York
40 Foley Square, Room 415
New York, New York 10007-1312

Re: Rapillo v. Fingerhut, Holzer et al., Docket No.: 09-CV-10429(GBD)

Dear Judge Broderick:

Counsel for the Plaintiffs filed a "Joint" Status Report Monday, which I had not signed, nor did I sign off on the final version. I apologize to the Court and Mr. Conway for the difficulty counsel had in reaching me. I was in a meeting in the afternoon and then went to the Doctor for a mild emergency (all was well). Last week Mr. Conway and I did discuss an earlier draft of the report, but that week I was in California on day-to-day trial in arbitration. The version submitted to the Court contains new text I did not have an opportunity to review and excluded some of the text I had proposed to accurately convey the Fingerhut Defendants' position.

For example, the Status Report submitted to the Court does mention that Holzer stole money from Fingerhut, but excludes mention of the fact that the restitution order entered by Justice Farber on November 9, 2009, included restitution of \$ 1,600,000 for the Plaintiffs and \$10,735,391.29 restitution for Fingerhut.

Plaintiffs also excluded language I had proposed that:

Plaintiffs investments [other than as to the Waverly I] were made by wire to David Holzer's personal bank account, apparently with the intention that Holzer would use those funds as his own to make investments in his own name and to have some sort of investment partnership with the plaintiffs. There is no evidence that Fingerhut had any knowledge of plaintiffs' payments to or arrangements with Holzer and plaintiffs do not allege that they informed Fingerhut of those payments or arrangements.

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While one investment was made by Holzer in one of the Fingerhut related investments near the time he received money from the plaintiffs, there is no residual value in that investment which could be transferred to the plaintiffs, even if such a transfer were deemed to be appropriate, which the Fingerhut defendants believe it is not.

I am submitting herewith a revised Joint Status Report which Mr. Conway and I have agreed to in a red lined version for your Honor's convenience. I respectfully request that the Court endorse this letter with an order permitting the attached clean version Joint Status Report to be substituted for the earlier filed, not fully signed, version.

Respectfully,

A handwritten signature in black ink, appearing to read 'Max Folkenflik', written over the word 'Respectfully,'.

Max Folkenflik

MF/vm

cc: Robert J. Conway, Esq. (**via e-mail**)